



Legislative Briefs

from the Legislative Reference Bureau



Legislative Brief 09-1

May 2009

INDOOR SMOKING BAN IN WISCONSIN

Beginning July 5, 2010, smoking will be generally prohibited in public places and workplaces, whether publicly or privately owned, including taverns and restaurants. Until then, Wisconsin's current Clean Indoor Air Act will remain in effect, as well as ordinances restricting workplace smoking which have been enacted in 35 state municipalities, including Eau Claire, Kenosha, La Crosse, Madison, and Oshkosh.

2009 Wisconsin Act 12, which was signed into law by Governor Doyle on May 18, 2009, addresses the growing concern in the state and nationally over the health hazards associated with tobacco use and the effects of secondhand smoke. Wisconsin joins 32 other states with indoor smoking bans, including the neighboring states of Illinois, Iowa, and Minnesota.

CURRENT CLEAN INDOOR AIR LAW

Under the current Clean Indoor Air Act [Section 101.123, Wisconsin Statutes], originally created by 1983 Wisconsin Act 211, smoking is generally completely prohibited in hospitals, motor buses, day care centers where children are present, and a few other places. Smoking is also prohibited, except in designated areas, in indoor locations such as government buildings, offices, restaurants, schools, retail establishments, movie theaters, community-based residential facilities, and nursing homes. Exempted from the ban are places such as taverns, bowling centers, rooms where the main occupants are smokers, and manufacturing facilities. Persons who illegally smoke after being warned by an official or employee of a facility are subject to a \$10 fine.

2009 WISCONSIN ACT 12

Act 12 generally prohibits smoking in enclosed public places and places of employment. Key definitions in the law:

- **"Smoking"** means burning or holding, or inhaling or exhaling smoke from a lighted cigarette, cigar, pipe, or any other lighted smoking equipment.
- **"Enclosed"** means a structure that has a roof and more than two substantial walls.
- A **"public place"** is defined as a place that is open to the public, regardless of whether a fee is charged, or a place to which the public has lawful access or may be invited.
- A **"place of employment"** is any indoor place that employees normally frequent during the course of employment, including an office or work area, an employee lounge, a restroom, a conference or meeting room, a classroom, or a hallway.

The following questions and answers explain the details of the new smoking ban [s. 101.123], which will take effect on July 5, 2010.

Where is indoor smoking banned?

Smoking will not be allowed in any of the following enclosed places: places of employment, public places, state or local government buildings, taverns, restaurants, bowling centers, theaters, lodging establishments, retail establishments, day care centers, educational facilities, correctional facilities, state institutions, college residence halls or dormitories, hospitals and clinics, assisted living facilities, common areas of multiple-unit residential properties, sports arenas, bus shelters, public conveyances, and private club facilities (those used by an organization that limits its membership and is organized for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose.)

In addition, persons may not smoke in the immediate vicinity (within six feet) of the State Capitol, on the premises of an in-use day care center, on the grounds of juvenile correctional facilities, or within 25 feet of a University of Wisconsin System residence hall or dormitory.

Where is indoor smoking allowed?

The ban on smoking does not apply in:

- A private residence;
- A retail tobacco store or tobacco bar in existence on June 3, 2009;
- A room used as a residence by only one person in an assisted living facility or such a room in which all occupants have requested in writing to be allowed to smoke; and
- Tribal casinos or facilities (due to tribal sovereignty provided under federal law).

May indoor smoking areas be set aside?

No. Act 12 repeals the authority of a person in charge of a building to designate rooms or parts of rooms as smoking areas.

May local governments enact smoking ordinances?

Yes. Counties, cities, villages, and towns may enact ordinances, and school districts may adopt policies that, complying with the purpose of the law, protect the health and comfort of the public. Any such rule regulating or prohibiting outside smoking in certain areas may apply only to public property under the jurisdiction of the governmental unit.

May businesses provide outdoor smoking areas?

Yes. Outdoor smoking areas may be designated by taverns, restaurants, private clubs, or retail establishments that are a "reasonable distance" from any entrance to the facility so that customers, employees, and others associated with the business may smoke. A municipal smoking ordinance may not define the term "reasonable distance," nor may it specify a minimum measured distance.

What is the penalty for illegal smoking?

A person who smokes where it is prohibited is subject to a forfeiture of not less than \$100 nor more than \$250 for each violation.

If the person in charge of a facility fails to take any required action to stop illegal smoking, he or she is subject to a forfeiture of \$100 for each violation, but no more than one penalty per day. If the person in charge has not pre-

viously received a warning notice, then the law enforcement officer must issue a warning for the first violation in lieu of a citation.

Who enforces the law?

The person in charge of a facility is responsible for making reasonable efforts to prohibit persons from illegally smoking. For example, a bartender may not provide matches, ashtrays, or other smoking-related equipment, and must take all of the following steps:

- Post warning signs or provide other appropriate notification;
- Refuse to serve a person who is smoking in a tavern, restaurant, or private club;
- Ask a person who is smoking to refrain from doing so;
- Ask a person to leave if he or she refuses to stop smoking; and
- Immediately notify an appropriate law enforcement agency if a smoker refuses to leave after being asked to do so.

A person in charge may take other measures to prevent a person from being exposed to secondhand smoke.

Sheriffs and municipal police officers may issue citations if they observe someone smoking where it is not permitted, or they may respond to citizen complaints or when notified by the person in charge of a facility. The Wisconsin Department of Justice is also authorized to enforce the antismoking law.

An arrest or conviction for a violation of the law may not be considered in any action to revoke, suspend, or refuse to renew an alcohol beverage license or permit.

FOR MORE INFORMATION

For additional information about current laws relating to smoking and tobacco, see Wisconsin Brief 01-8, "Wisconsin's Clean Indoor Air Act and Other Smoking and Tobacco Regulation," available at: <http://www.legis.wisconsin.gov/lrb/pubs/wisbriefs.htm>. Among various topics, this brief discusses the prohibition against children possessing tobacco products [s. 254.92 (2)].